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902wp12495.23

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**902 WRIT PETITION NO. 12495 OF 2023
AND
WRIT PETITION NO. 12510 OF 2023**

**HAUSHIRAM BALASAHEB TUPKE AND OTHERS
.....Petitioners**

VERSUS

**NAMDEO SHIVRAM VIRKAR AND OTHERS
.....Respondent**

Mr. Krishna P. Rodge, Advocate h/f Mr. K. B. Shinde, Advocate
for the petitioners

Mrs. Smita Kulkarni, Advocate h/f Mr. K. M. Nagarkar, Advocate
for the respondent Nos. 1 to 3, 10 to 13

CORAM : KISHORE C. SANT, J.

DATE : 10th JANUARY, 2025

P. C.

1. Heard.

2. In both these petitions similar order is challenged i.e.
order passed by the learned tribunal rejecting the application for
setting aside the no say order. The present petitioners in
WP/12495/2023 are original defendant Nos. 12 to 16 in RCS

NO. 99/2015 filed by the present respondent Nos.1 to 3. The impugned order is dated 29-09-2023. In writ petition No. 12510/2023 the petitioner is defendant No.2. The trial court has passed the order even against these petitioners. No say order was passed on 08-10-2021 as in spite of service, the petitioners did not file their written statement. Subsequently the petitioners filed application below Exh.101 and 91 respectively for setting aside the no WS order. In application No.101 reasons stated that they were served late. They had appointed lawyer to represent them in the suit. However, there was some communication gap and they were required to change their advocate. It is for this reasons they could not file written statement in time. Defendant No.2 also stated same reason. In addition defendant No.2 stated that she is staying at Indore, Madhyapradesh for most of the period. There was corona pandemic and therefore, she could not supply the documents to her lawyer. It is the case of the petitioners in both the petitions there is no deliberate delay in filing the written statement. The learned trial court considered that respondents were served long back and still no written

statement was filed and refused to allow the application. The petitioners are, therefore, before this court.

3. The learned advocate for the petitioners submits that defendant Nos.15 and 16 were served on 03-09-2019, Defendant Nos. 12 and 13 were served on 24-02-2020 defendant No.14 served on 05-07-2019. So far as defendant Nos.12 and 13 are concerned, when they were served immediately thereafter Corona Pandemic started. So far as defendant No.2 is concerned though she was served but because of the difficulty as stated in the application, she could not file written statement. He submits that the dispute is in respect of the landed property a valuable right of parties is involved. The defendants need a fair opportunity to defend the suit. Thus, he prays for allowing the writ petition.

4. The learned advocate for the respondent Nos.1 to 3 vehemently opposes the petition. She submits that defendant No.14 was served on 05-07-2019 i.e. prior to Corona Pandemic.

Defendant Nos. 15 and 16 were already served on 03-09-2019. Changing of the advocate cannot be said to be a reason for not filing the written statement in time. Though sufficient time was available, the petitioners did not take steps just to prolong the proceedings of the suit. She thus rejection of the petitions.

5. This court has considered the submissions. However, just to give fair opportunity to the defendants this court is inclined to allow both the petitions. Thus the writ petition No. 12495/2023 stands allowed subject to each petitioner paying cost of Rs. 3000/- to respondent Nos. 1 to 3 before the trial court within four weeks. The writ petition No. 12510/2023 is also allowed subject to petitioner paying cost of Rs.2000/- to respondent Nos. 1 to 3 before the trial court within four weeks. With this writ petitions stand allowed and disposed off.

6. The applications below Exh.101 and 91 in RCS No. 99/2015 pending before the court of Learned CJSD, Kopargaon stands allowed. No order as to costs.

[KISHORE C. SANT, J.]